

IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH, SHIMLA.

RSA 214 of 1997.

Judgment Reserved on May 27, 2008.

Date of decision 20th June, 2008.

Chuhad Singh and another ...Appellants.

Versus

Sher Singh & others ...Respondents.

Coram:

The Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting?¹ Yes.

For the appellants Mr. Bimal Gupta, Advocate.

For the respondents Mr. Vinod Gupta, Advocate.

Dev Darshan Sud, J.

This is the defendants appeal against the judgment of two Courts below decreeing the suit of the respondent-plaintiffs for declaration and consequential relief of injunction that they are the owners of the suit land and that the appellants were never inducted as tenants over the suit land comprised in khewat No. 55, khatauni No. 73, kita 7, measuring 6-18-15 bighas and the revenue entries

¹ Whether Reporters of Local Papers are allowed to see the judgment? Yes.

showing them as tenants are wrong, illegal and not binding on the interests of the plaintiffs. The suit was contested on a number of grounds. The plaintiffs-respondents pleaded that late Shri Sidhu and Sansaru were two real brothers and were owners in possession of the land comprising khewat No. 175, khatauni No. 241 to 243, kita 9, measuring 10-0-3 bighas, Muhal Kalhaud and land bearing khewat No. 55, khatauni No. 73, khasra kita 7, measuring 6-18-15 bighas in Muhal Kalhod to the extent of equal shares. In all there were 8 shares in the above said land. The plaintiffs are the sons of Sh. Sidhu whereas, defendant Nos. 1 and 2 are the sons of Sansaru. Sansaru sold his 3 shares to one late Sh. Khazana, father of defendants 3 to 5 vide registered sale deed No. 26, dated 5.7.2003 Samwat. Thus, Sansaru remained only owner of one share out of the above said 8 shares. On the said sale, mutation No. 515 was incorporated. Further, Sansaru and Sidhu sold 2 shares (one each) to defendants 3 to 5 vide registered sale deed No. 54, dated 25.4.1955. Therefore, Sansaru finished his entire share, whereas Sidhu remained with only 3 shares and defendants 3 to 5 became owners of 5 shares, as 3

shares were purchased by their father and 2 shares were sold to them. But on the said second sale deed No. 54, mutation No. 786 was wrongly incorporated. The mutation and revenue record wrongly showing defendants 3 to 5 owners of 3 shares of Sidhu. Sidhu had gifted all his shares to the plaintiffs. Thus, the plaintiffs were owners in possession of 3 shares of the suit land.

The plaintiffs further pleaded that during settlement, Sidhu and defendants 3 to 5 exchanged their lands. Sidhu gave khasra Nos. 539, 540, 543, 545 of khewat No. 58, measuring 7-19-5 bighas to defendants 3 to 5 and in exchange obtained khasra No. 494/1, 548, 550, 564 of khewat No. 175, measuring 6-9-9 bighas out of the suit land. So, after exchange apart from 3 shares in the suit land, the plaintiffs became owners of above said 6-9-9 bighas of land in the suit land. 3 shares were equal to 6-4-17 bighas plus 6-9-9 bighas means, plaintiffs became owners of 12-14-6 bighas of land out of the entire suit land. During settlement, defendants 1 and 2 in collusion with the revenue staff got themselves entered as non occupancy tenants over a part of suit land described as Khewat

No. 152, khatauni No. 289, kita 7, measuring 6-18-15 bighas and subsequently defendants No. 1 and 2 became owners of the said land. At present, the said land was described as khewat No. 55, khatauni No. 73, khata kita 7, measuring 6-18-15 bighas. As defendants 1 and 2 were never inducted as tenants over the said land either by the plaintiffs or by defendants 3 to 5, thus, the revenue entries were depicting wrong state of affairs. The defendants never remained in possession of the suit land as tenants. The land was in joint possession of plaintiffs and defendants 3 to 5. It is further alleged that during settlement Sidhu and defendants 3 to 5, namely Kanshi, Sita Ram and Paras Ram exchanged their lands. Sidhu gave up his share in khasra Nos. 539, 540, 543 and 545 of khewat No. 58, measuring 7-19-5 bighas to defendants 3 to 5 in exchange of khasra Nos. 494/1, 548, 550 and 564 of khewat No. 175 measuring 6-9-9 bighas. Thus, after exchange, the plaintiffs are owners in possession of 3 shares of the land in suit which is equal to about 6-4-17 bighas and also owners of 6-9-9 bighas of the land obtained in exchange. In all they are owners in possession of 12-14-6 bighas of land. On

21.10.1988, the defendants tried to interfere with the peaceful possession of the plaintiffs over the suit land and despite repeated requests did not desist from their illegal designs, hence suit for declaration and permanent prohibitory injunction, being the present suit, was instituted by them praying for a decree of declaration to the effect that they were the owners in possession of the suit land.

The suit was contested on a number of grounds including the locus standi of the plaintiffs, jurisdiction, limitation and maintainability. The exchange by Sidhu and defendants 3 to 5 was admitted to be correct but a specific stand was taken that Sansaru (father of Chuhar Singh and Mehar Singh, defendants 1 and 2 in the suit) was inducted as tenant by Sidhu (father of the plaintiffs) on land comprised in khasra Nos. 549, 551, 552, 556, 557, 559, 561 measuring 6-18-15 bighas. The learned trial Court on two crucial issues as to whether the plaintiffs were owners of the land as pleaded and whether the defendants were tenants over the suit land, held that the plaintiffs were owners of the suit land and defendants 1 and 2

were never inducted as tenants over the suit land. On the other issues regarding locus standi, jurisdiction, limitation and maintainability of the suit i.e. issues 3 to 6, onus of which was on the plaintiffs, no evidence was led and the issues were specifically given up by the defendants. The suit was accordingly decreed on 6.9.1991.

The defendants - appellants applied for amendment of the written statement which was allowed by this Court on 17.5.1996 in Civil Revision No. 308 of 1995 and two additional issues were framed by the learned District Judge, Mandi and the case remanded to the trial Court for decision on the two additional issues:

- "2-A Whether defendants 1 and 2 are tenants of the suit land under the plaintiffs? If so, its effect? OPD.
- 2-B If issue No. 1 is not proved, whether the defendants No. 1 and 2 are tenants of the defendants 3 to 5? If so, its effect? OPD."

Issue No. 2-A was not pressed. This was specifically given up. On issue No. 2-B, evidence was led by the parties. After a detailed consideration of the evidence, the learned Court

held that the evidence of the contesting defendants revealed that they had changed their stance after pleading that they were the tenants of defendants 1 and 2. They turned around and argued that they were tenants of defendants 3 to 5. This change in their stand was necessitated by the fact that DW-1 Chuhar Singh could not understand the questions during his previous statement recorded in Court. The learned Court holds that it defies all logic that defendants 3 to 5 would purchase the suit land from the predecessor in interest of defendants 1 and 2 and immediately thereafter will induct them as tenants on the same land. Irrespective of this fact, the evidence recorded during trial was also analyzed by the learned trial Court in detail including discrepancies which had occurred in the statements of DW-1 Sher Singh, DW-2 Durga Dass before and after the framing of additional issues. The discrepancies being of a nature which would show either that the statement of DW-1 is false or those of the other witnesses produced by him are not in accord with the stand which he has taken. In view of this stand and the fact that the evidence led by the defendants - appellants was contradictory and contrary to the

earlier stand adopted by the defendants and the statement made on oath, no reliance was placed on the jamabandis, on which the defendants - appellants laid the foundation of their claim. The suit was again decided against them. In appeal, the learned Court holds that the stand adopted in appeal that earlier a mistake had occurred in the pleadings where it had been admitted that father of the plaintiffs Sidhu had inducted Sansaru, father of defendants 1 and 2 as a tenant on the land was due to a clerical mistake was not correct. He has considered the other evidence also and concludes that the judgment of the learned trial Court cannot be faulted.

This appeal was admitted on the substantial questions of law as filed with the appeal, which are:

1. Whether the civil court has jurisdiction to try the suit on the basis of challenge to tenancy rights of appellants and proprietary rights conferred on them regarding land comprised in khasra Nos. 549, 551, 552, 556, 557, 559 and 561 measuring 6-18-15 bighas situate at Mohal Kalauhad, Tehsil Sundernagar, Distt. Mandi, HP in

view of law laid down by this Hon'ble Court in full bench judgment of Chunia versus Jindu.

2. Whether the learned District Judge has misconstrued, misinterpreted revenue record more particularly Ext. DW-1/G, copy of Jamabandi 1971-72, Ext. PW-1/A, copy of Jamabandi 1976-77, Ext. PW-1/B, copy of Jamabandi 1988-89, DW-1/E etc.
3. Whether the suit is within limitation.
4. Whether the learned District Judge has misconstrued, misinterpreted the pleadings and evidence on record and the view taken by the learned District Judge is not possible on the basis of material on record."

However, questions 1 and 4 were urged as substantial questions of law. On the 4th question as to whether the District Judge has misconstrued and misinterpreted the pleadings and the evidence on record, as noticed above, the suit was resisted by the defendants on the ground that they were the tenants of Sansaru. A specific issue was framed on this point being issue No. 2 which was answered in the negative, that is to say it was held that appellants were not the tenants of defendants 1 and 2. In appeal, the appellants altered their stand by

saying that they were the tenants of defendants 3 to 5. Again two issues, issue 2-A and 2-B, as reproduced above, were framed. Issue No. 2-A was given up and on issue No. 2-B again evidence was led. The learned trial Court noticed and rightly that the defendants had changed their stance and stand from the one adopted by them in the written statement filed. The appellants were approbating and reprobating in the same breath. Having failed to establish their tenancy under the father of the plaintiffs, they suddenly shifted their stand alleging that there was a clerical mistake in the written statement. What has not been explained is as to how even if there was a mistake in the written statement, the parties went to trial with their eyes open on an issue framed on the pleadings and having entered the witness box making statements on oath substantiating the stand. Having failed in this effort, they now turn around and say that they are the tenants of defendants 3 to 5. Surely, this kind of practice should and ought to be discouraged. No party to a litigation has any right to enter the witness box and make statements on oath which are untrue. In this case, in the first instance, a case

is woven on facts that defendants 1 and 2 are the tenants of late Sidhu, father of the plaintiffs and then having failed in such an attempt, has amended the written statement to say that they are the tenants of defendants 3 to 5. The impermissibility of such a stand being adopted by the defendants apart, here this case discloses a manipulation and abuse of the process of the Court.

Even on consideration of the merits, the learned trial Court holds that the statements made by the defendants and their witnesses in the un-amended written statement and after amendment are mutually destructive and disproves the revenue record which is the second line of defence adopted by the defendants. The learned District Judge, considering the case of the plaintiffs, specifically holds:

"20. Sh. Chuhar Singh defendant No. 1 in his statement dated 10.10.96 states that the plaintiffs or defendants No. 3 to 5 have never been in possession of the suit land, though they claim that they were inducted as tenants by defendants No. 3 to 5. In the application for amendment of the written statement it

is specifically pleaded that father of defendants No. 1 and 2 was inducted as tenant by the father of the plaintiffs or father of defendants No. 3 to 5. Now in his statement after amendment of the written statement as permitted by the Hon'ble High Court, Chuhar Singh defendant No. 1 in his cross examination states that his father was never inducted as tenant. He is unable to state what rent was being paid. He also states that they have not produced any witness from the village. He very specifically states that he is not aware that defendants No. 1 and 2 were tenants of defendants No. 3 to 5.

21. DW-2 Gawayanu Ram does not take the case of the defendants any further. In his cross examination, he admits that defendants No. 1 and 2 were never inducted as tenants in his presence and no rent as claimed by the defendants was ever paid in his presence.

22. DW-3 Mangat Ram states that he is not aware if the suit land was earlier cultivated by Sidhu and Sansaru i.e. the original owners. He admits that rent was never paid in his presence. He lives at a distance

of about 1 ½ k.m. from the place where the land is located."

There is thus, no mis-appreciation of the pleadings of the parties or the evidence on record. This question is answered accordingly. The appellant has no case on this ground.

On the other questions i.e. 2 and 4, as to whether jurisdiction of Court is barred in view of the Full Bench judgment of this Court in *Chunia v. Jindu Ram*, it may be noticed that acquisition of proprietary rights follows tenancy which facts have to be established. Admittedly, both the Courts below having rightly held that no tenancy was established, as even the evidence of the defendants did not establish such a relationship and the entries being suspicious, no presumption of truth would apply to the revenue record. Mere revenue entries are no proof of title of the parties. What has to be established on record is that regular procedure under the Himachal Pradesh Tenancy and Land Reforms Act must be followed.

The learned District Judge while dealing with this aspect has rightly held after relying upon the decision in Ram Lok v. Dhani Ram and others,

1993 (1) Sim. L.C. 169 and the decision of the Supreme Court in Guru Amarjit Singh v. Rattan Chand, AIR 1994 SC 227. The Court further strengthens its judgment by holding that stray entries in the revenue record do not constitute proof of title. It is trite to observe that revenue entries do not confer title. (See Corporation of the City of Bangalore v. M. Papaiah and another, AIR 1989 SC 1809, State of H.P. v. Keshav Ram and others, (1996) 11 SCC 257), Sawarni (Smt) v. Inder Kaur (Smt) and others, (1996) 6 SCC 223, Guru Amarjit Singh v. Rattan Chand and others, (1993) 4 SCC 349 and Baleshwar Tewari (Dead) by LRs. and others v. Sheo Jatan Tiwary & others, (1997) 5 SCC 112). The very basis of the status of the appellants as tenants being shrouded by suspicion, the basis of their tenancy is not established on record. Their conduct in Court being one of being manipulative in nature, suggesting clear abuse of the process of Court, it cannot be said that the Courts below have acted contrary to the dictum of the Full Court judgment of this Court in *Chuniya v. Jindu Ram (supra)*, as the very foundation of tenancy stands rebutted. In the circumstances, it is held that the Civil Court had

jurisdiction to decide the case, more especially when the status of the defendants- appellants was based on falsehood and half truths. On the other two issues, no submissions have been made before me. The Courts below have rightly held that stray entries in the revenue record Exs.DW-1/G, DW-1/E, PW-1/A and PW-1/B would not constitute proof of title, more especially when it had been established on record that such entries had not been made in accordance with law and the defendants own evidence was destructive of the foundation laid by it in the two written statements filed.

On the question of limitation, I do not find any pleading or evidence to substantiate such plea. This question is, therefore, answered in favour of the plaintiffs, holding that the suit was within limitation.

This appeal is accordingly rejected. There shall be no order as to costs. Pending application(s) shall stand rejected.

June 20, 2008 (PC) .

(Dev Darshan Sud) , J.